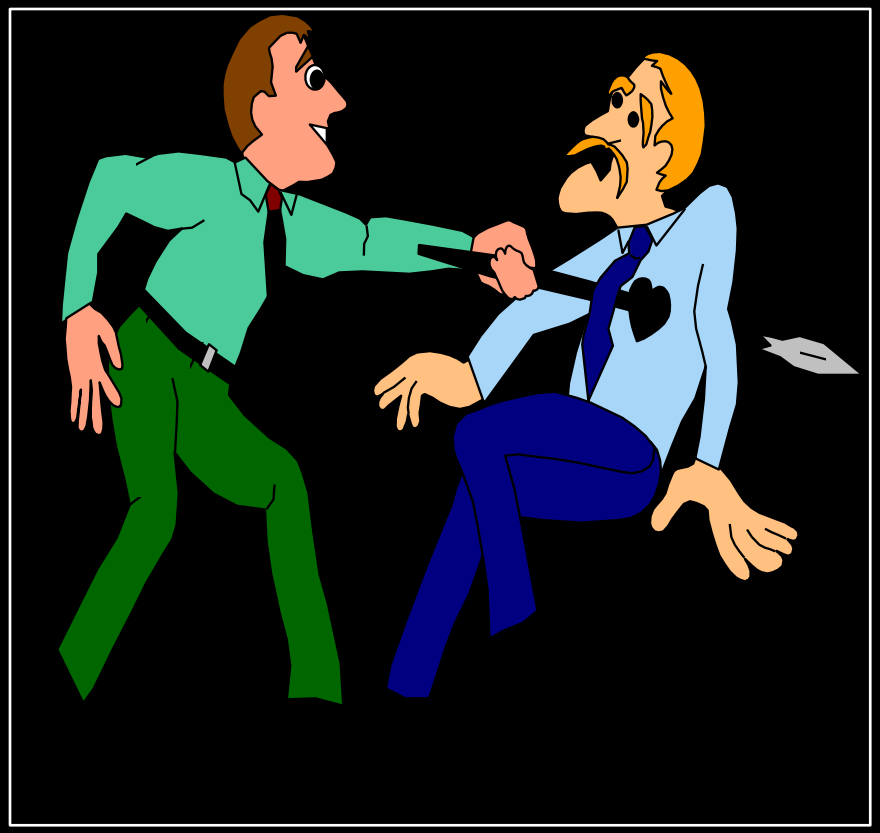
MILITARY JUSTICE

LEGAL BASIS FOR THE MILITARY JUSTICE SYSTEM

- U.S. Constitution
- Uniform Code of Military Justice
- Manual for Courts-Martial
- Service Regulations (AR 27-10)
- Court Decisions

DISCIPLINARY OPTIONS



- PUNITIVE:
- - **JUDICIAL:**
- - SCM,SPCM,BCD SPCM, GCM
- - **NONJUDICIAL:**
- - CO/FIELD GRADE/GO NJP

BASIC RIGHTS OF THE SOLDIER

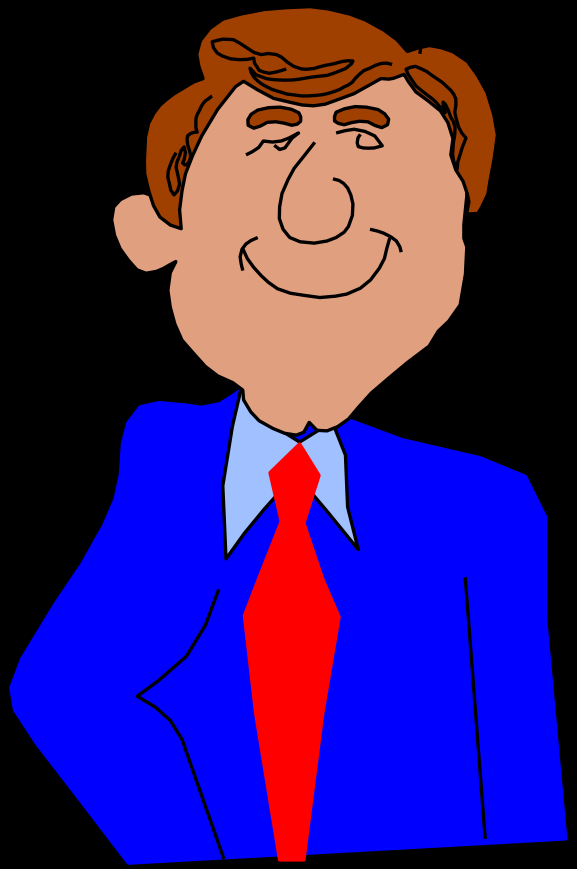
- RIGHT TO A DEFENSE LAWYER
- RIGHT TO DUE PROCESS
- RIGHT TO REMAIN SILENT
- RIGHTS UNDER SEARCH AND SEIZURE

Art. 31 Rights

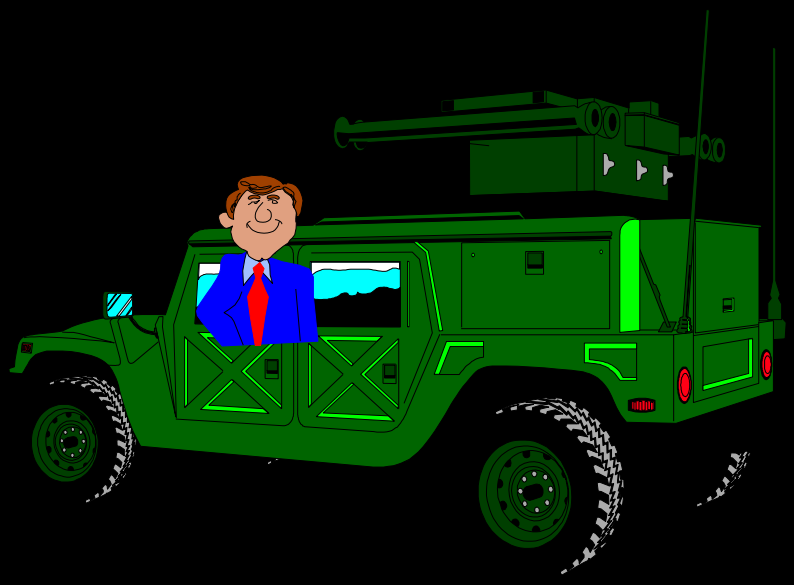
- You do not have to answer any questions or say anything.
- Anything you say or do can be used as evidence against you in a criminal trial.

Art. 31 Rights

- You have a right to a lawyer:
- - Before questioning
- - After questioning
- - During questioning
- - Can be a civilian lawyer - $$$
- - Military lawyer - no $$$



MILITARY LAWYER

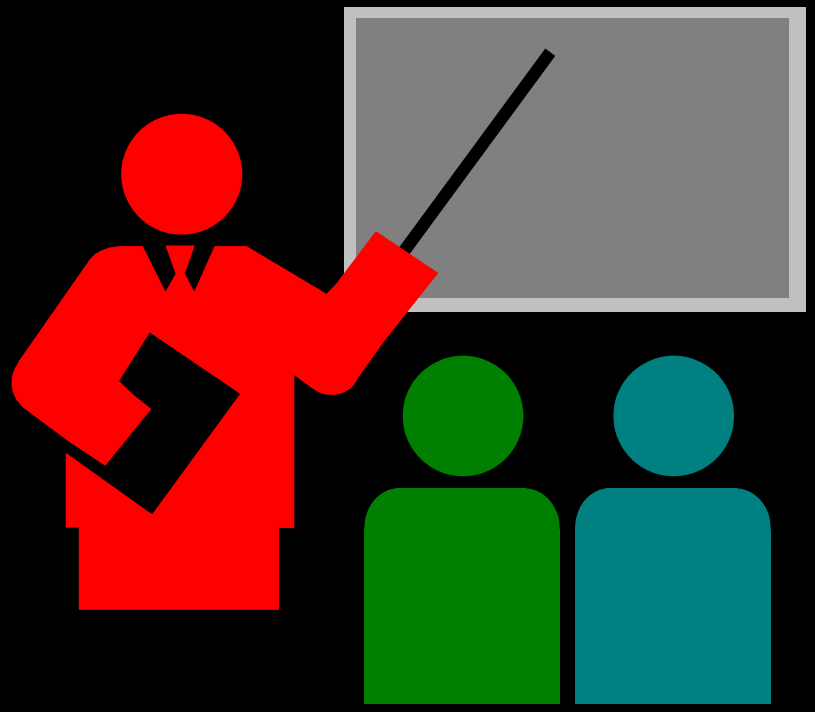


- YES! Military lawyers are real lawyers who have passed the bar exam of some state.
- You can get a military lawyer by name if reasonably available!

NONPUNITIVE ACTION

- Administrative counseling
- Administrative reprimand
- Administrative reduction in grade for inefficiency
- Extra training

Nonpunitive Action cont.



- Bar to Reenlistment
- Revocation of Security Clearance
- MOS Reclassification
- Withdrawal of privileges
- Adverse efficiency report

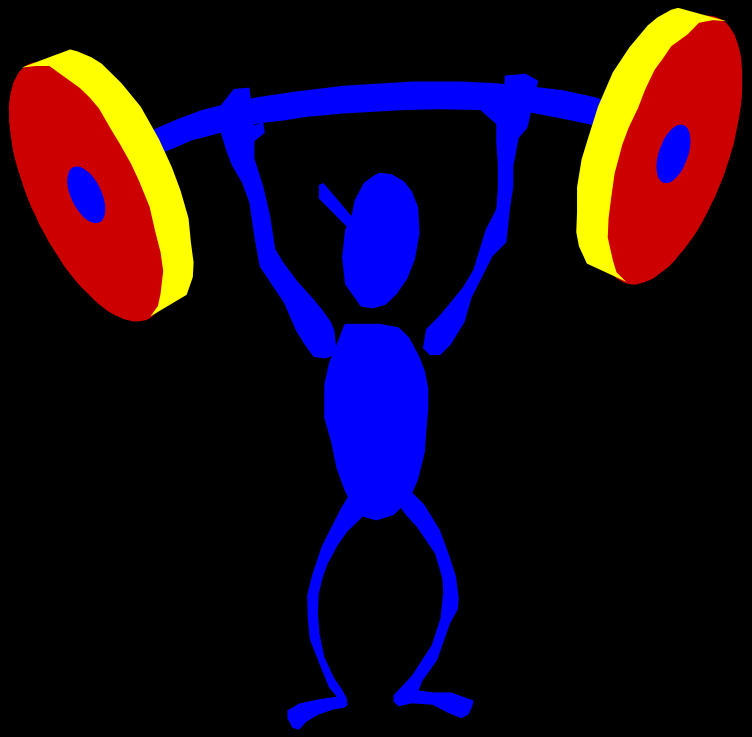
Administrative Counseling

- SM will be counseled by responsible person about deficiencies at least once before separation. Counseling will be comprehensive and include:
- a. Reason for counseling
- b. Fact that separation may occur if behavior continues
- c. Type of discharge that could result and the effects of such types.
- Soldiers Rights: SM must be afforded opportunity to overcome deficiencies. Counseling should be documented in writing on DA Form 4856 and filed in unit file

Administrative Reprimand/Admonition

- Documents misconduct or poor performance in official files
- For enlisted SMs initiated by SMs immediate supervisor
- For officer SMs initiated by the SMs immediate commander
- Contains reason for reprimand
- Not imposed as punishment under Art. 15
- Should indicate where it is to be filed.
- Soldiers Rights: notice, rebuttal, appeal

Extra Training



- Commander’s Tool to correct deficiencies
- Must be directly related to deficiency and aimed at improving SMs performance
- Must stop when deficiency is overcome

Bar to Reenlistment

- Enlisted SMs only
- Discretionary grounds: untrainable, unsuitable
- Mandatory grounds: Single SM with no FCP, failure to progress on weight control program, fail two consecutive APFTs, Removed for cause from a NCOES course
- Soldiers Rights: Right to request 7 days to comment, appeal rights, If SM can overcome, can request Chap. 16 separation (Honorable) - varies with SM’s time in service

NONJUDICIAL PUNISHMENT

- Summarized Art. 15
- Formal Art. 15
- Company Grade
- Field Grade

Summarized Article 15

- Present Matters in defense, extenuation and/or mitigation
- Appeal within 5 calendar days receiving punishment
- Option for trial by court-martia
- **No right to seek legal cou**

Formal Article 15

- Present matters in defense, extenuation and/or mitigation
- Appeal within 5 calendar days of receiving punishment
- Consult legal counsel
- Open or closed hearing
- Option for trial by court martial

Maximum Punishments/Summarized Art. 15

- 14 days extra duty
- 14 days restriction
- Oral reprimand/admonition
- Any combination of the above

Maximum Punishment/Company Grade Art. 15

- Reduction of one grade for E-4 and below
- Forfeiture of 7 days pay for one month
- 14 days extra duty
- 14 days restriction
- An oral or written reprimand/ admonition

Maximum Punishment/ Field Grade Art. 15

- Reduction of one grade from E-5 or E-6 in time of peace, two grades in time of war
- Reduction of one or more grades from E-4 and below
- Forfeiture of one-half month’s pay per month for two months
- 45 days extra duty
- 45 days restriction
- Oral or written reprimand/admonition

ADMINISTRATIVE SEPARATION

- Separation Procedures:
- - Notification
- - Admin. Board

Notification Procedure

- SM with less than 6 years service.
- Where an honorable or general discharge or entry level separation is sought.

Administrative Board Procedure

- All SM with 6 years or more service.
- SM with less than 6 years service, where an other than honorable discharge is sought.

Chapter 5-8 Involuntary Separation Due to Parenthood

- Commander's Notification
- Soldier's Acknowledgment
- Magic Counseling
- Medical Exam (Soldier's Request)
- 2A, 2-1, Supporting Documentation

Chapter 6 Separation Because of Dependency or Hardship

- DA 4187 requesting separation
- Affidavits from soldier,dependents, two individuals other than family
- 2A, 2-1
- Medical Exam (soldier’s request)

Chapter 8 - Separation of Enlisted Women - Pregnancy

- DA 4187 requesting separation
- Complete Medical Exam
- Certified pregnancy diagnosis (doctor)
- Pregnancy Counseling Checklist, 2A, 2-1

Chapter 9 - Alcohol or Other Drug Abuse Rehab Failure

- Commander’s notification
- Soldier’s Acknowledgment
- Magic Counseling
- Documentation of Rehab attempts
- Complete Medical Exam, 2A, 2-1

Chapter 13 - Separation for Unsatisfactory Performance

- Commander's notification +SM's acknowledgment
- Complete Medical Exam + Mental Status Eval.
- Magic Counseling, 2A, 2-1
- Supporting Docs.

Chapter 14 - Separation for Misconduct

- Commander's Notification + SM's acknowledgment
- Complete Medical Exam + Mental Status Eval
- Magic Counseling, 2A, 2-1
- Supporting Docs.

Chapter 18 - Failure to Meet Body Fat Standards

- Commander's Notification + SM's Acknowledgment
- Medical Exam (soldier's request)
- Documentation of Rehab attempts
- 2A, 2-1
- Supporting docs.

TYPES OF COURTS-MARTIAL

- SUMMARY COURT-MARTIAL
- SPECIAL COURT-MARTIAL
- BAD CONDUCT DISCHARGE SPECIAL COURT-MARTIAL
- GENERAL COURT-MARTIAL

SUMMARY COURT-MARTIAL

- Composed of one commissioned officer.
- May adjudge any punishment not forbidden by the code except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard labor without confinement for than 45 days, restriction for more than two months,

SUMMARY COURT-MARTIAL

- or forfeiture of more than two-thirds of one month’s pay.
- No right to counsel!
- Normally convened by a battalion officer
- Accused must consent
- Enlisted personnel only
- Not allowed to adjudge a discharge

Special Court-Martial

- Composed of a panel or judge alone.
- May try any person subject to the code for any noncapital offense.
- May adjudge any punishment under R.C.M. 1003 except death, dishonorable discharge, dismissal, confinement for more than six months, hard labor without confinement for three

Special Court-Martial

- months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than six months
- B.C.D. Special is the same with the exception that it is empowered to adjudge a Bad Conduct Discharge
- At least three members and Military judge

Special Court-Martial

- 1/3 enlisted membership if the accused is enlisted and so requests.
- Trial and defense counsel are detailed
- Trial Counsel need not be a lawyer

General Court-Martial

- Panel or Judge Alone
- May try any person subject to the code.
- May adjudge any punishment authorized under R.C.M. 1003.
- Requires written advice by SJA
- Requires a formal pre-trial investigation - Art. 32

General Court-Martial

- Used for the most serious types of crimes.
- May adjudge a death sentence.
- At least 5 members and a military judge.
- May request 1/3 enlisted
- Detailed counsel - must be lawyers + certified by TJAG